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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/700,241

11/03/2003

Wamis Singhatat

ZL 0192

3783

23367 7590 08/21/2007
GENE WARZECHA
LINVATEC CORPORATION
11311 CONCEPT BOULEVARD
LARGO, FL 33773

EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

MAIL DATE

DELIVERY MODE

08/21/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/700,241

Applicant(s)

SINGHATAT, WAMIS

Examiner

James L. Swiger

Art Unit

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-16,18-27 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-5,7 and 8 is/are allowed.
- 6) ☒ Claim(s) 9-16 and 18-27 is/are rejected.
- 7) ☒ Claim(s) 29-31 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9-14, 19-21 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sklar (US Publication 2002/0055780).

Sklar discloses a graft retaining system having an encircling means (20) that at least partially encircles a graft and is positionable relative to an adjacent bone tunnel (10), and where once the graft is inserted, it is capable of going through a tortuous path as the encircling, or "ring," portion can angle with respect to the graft as it is pulled tight yielding a tortuous portion of the graft for the purpose of securing. Note the reference has poor drawings; refer to Pars. 0051 through 0052. Though the encircling means may also be a securing means, the portions 23, are alternatively considered the securing means. Screw 24 may also be a 'securing means' that has a pointed tip, and a fixation tab is 28. As mentioned, the ring may be moved to a second position, as it is operable when engaged with the graft when pulled and is in the 'belt buckle' fashion. The sharpened prong may be the tip of 24. The ring surround the lumen of the cannula (see Fig. 2). Sklar also disclose the at least the steps of providing the

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encircling means, and positioning the means adjacent the bone tunnel (fig. 8a), and wherein the graft is forced into a tortuous path (considered the same as pulling the graft tight as mentioned in the reference for securing the graft within the encircling means.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16, 18 and 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar in view of Strobel et al. (US Pub 2001/0007074). Sklar disclose the claimed invention except for a securing means comprising an interference screw, that may also be a second member, and an insertion tool and the step of using the tool. Strobel et al. disclose an interference screw (70), and an insertion tool (84) that can move the second member relative to the first and the step of using the tool to insert the screw to secure the device (see pars 0059 through 0064). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Sklar having at least a securing means and an insertion tool in view of Strobel et al. to better use the device and secure the graft to the location desired.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sklar in view of Li et al. (US Patent 6,117,161). Sklar discloses the claimed

invention except for a bone engaging portion that specifically extends axially outwardly in one way and a bone fixation portion extending radially outwardly in also an opposing direction. Li et al. disclose a bone fixation portion that extends both ways, relative (see fig. 8) that is better for securing (See Col. 2, lines 37-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Sklar having at least a bone engaging portion that extends axially outwardly in one way and a bone fixation portion extending radially outwardly in also an opposing direction in view of Lie et al. to better secure the device.

Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Sklar '780 and Strobel et al. '074 as applied to claim 22 above, and further in view of Li et al. The combination of Sklar and Strobel disclose the claimed invention except for a bone engaging portion that specifically extends axially outwardly in one way and a bone fixation portion extending radially outwardly in also an opposing direction. Li et al. disclose a bone fixation portion that extends both ways, relative (see fig. 8) that is better for securing (See Col. 2, lines 37-56). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of the combination of Sklar and Strobel et al. having at least a bone engaging portion that extends axially outwardly in one way and a bone fixation portion extending radially outwardly in also an opposing direction in view of Lie et al. to better secure the device.

Response to Arguments

Applicant's arguments filed 5/24/2007 have been fully considered but they are not persuasive. With respect to claim 9, it is still held that (such as in Fig. 8A) the first and second members may be engaged with one another. Because of the pins, the first and second members are responsive to each other's movements and would further be capable of securing a graft. Even in this setup, the first member still at least has a side wall surrounding a central lumen which would be capable of conforming when rotated.

Allowable Subject Matter

Claims 1, 3-5 and 7-8 are allowed.

Claims 29-31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will

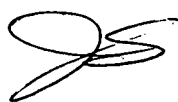
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the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

 8/18/07

JLS


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